

REMARKS

The following issues are outstanding in the pending application:

- Claims 1, 3-9, 14, 15, 17-21, 25, 27 and 28 are rejected under 35 USC 103;
- Claims 10-12 are rejected under 35 USC 103;
- Claims 16 and 26 are rejected under 35 USC 103; and
- Claims 22-24 are rejected under 35 USC 103.

Because the response of September 19, 2008 was not entered and in view of the comments of the Examiner in the Advisory Action mailed October 24, 2008, Applicant is submitting a revised response with the filing of a Request for Continued Examination.

Claim Amendments

The claims have been amended in order to more clearly define the subject matter of the invention. Claims 1 and 21 now recite a method for deforming a flexible film material that includes at least the steps of 1) placing a film material having edge portions between positive and negative moulds, 2) forming a single receptacle depression in the film material between the moulds, 3) providing tension on the film material in order to stretch it without forming creases in a central portion of the depression, 4) reducing the tension of the film material while it is being moulded in order to draw additional film material between the positive and negative moulds, in which lateral creases are formed in the film material around the entire edge portion of the film material while the film material in the central upper portion of the mould retains its original shape during the deforming procedure. The device claim 25 includes that same elements as claim 1. Claims 7, 23 and 24 have been amended to conform the subject matter to the amendment in claim 1 and 21 respectively. Claims 29 and 30 are new. Support for these amendments are found in paragraphs [0035] and [0037]. No new matter has been added.

35 USC 103

Claims 1, 3-9, 14, 15, 17-21, 25, 27 and 28 are rejected under 35 USC 103(a) as having subject matter unpatentable over U.S. Pat. No. 4,246,223 to Patterson in view of U.S. 2002/0079611 to Ellison et al. Applicant respectfully traverses this rejection.

Patterson discloses a method and apparatus for making compartment trays formed from coated paper milk carton stock in which the compartments are separated by dividers. Tray blanks are cut and are scored in order to control the formation of wrinkles when the blank is folded and formed in the single set of dies. The scoring is not completely through the sheet material and is performed to induce the sheet material to fold and form in desired regions and to control the formation of wrinkles in the tray. The forming and wrinkling of the tray surface is controlled by the positions of the scored regions of the blank. The mating male and female dies form three compartments in the tray blank.

Ellison discloses a process and apparatus for preparing a molded article in which film is placed over a mold cavity and extending over the mold rim cavity. The film is held in place over the mold cavity by a clamping frame that engages the film adjacent to the mold cavity rim. Molten plastic is poured over the film, forming a molded article in the shape of the mold cavity in which the film is an outer layer of the molded article. The film tension is reduced during the mold closing step in order to allow the film to move under the clamp into the cavity in a predetermined manner so as to minimize film thinning and wrinkling in the molded part.

Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), controls the consideration and determination of obviousness under 35 U.S.C. 103(a); *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734-35, 167 L. Ed. 2d 705, 715 (U.S. 2007). The four factual inquires enunciated therein for determining obviousness are: (1) determining the scope and contents of the prior art; (2) ascertaining the differences between the prior art and the claims in issue; (3) resolving the level of ordinary skill in the pertinent art; and (4) evaluating evidence of secondary considerations.

In this case, neither the level of ordinary skill in the art, nor secondary considerations are at issue. However, in order to assess the scope and content of the prior art properly, a

thorough understanding of the invention must be acquired by studying Applicant's claims and the specification. M.P.E.P. § 2141. Thus, the inquiry begins with construction of Applicant's claims, explained below. Next, when ascertaining the differences between the prior art and the claims at issue, both the invention and the prior art references as a whole must be considered, and *all* claim limitations must be considered when determining patentability of Applicant's invention. M.P.E.P. §§ 2141; 2143. When this is properly done in this case, as shown below, it becomes clear that differences exist that preclude obviousness. And finally, the test for obviousness requires identification of a reasonable basis for combining the claimed elements in the claimed fashion. *KSR*, 127 S. Ct. at 1741; M.P.E.P. §2143.

Applying the proper test to this case begins with amended independent claims 1, 21 and 25 which require 1) placing a film material having edge portions between positive and negative moulds, 2) forming a single receptacle depression in the film material between the moulds, 3) providing tension on the film material in order to stretch it without forming creases in a central portion of the depression, and 4) reducing the tension of the film material while it is being moulded in order to draw additional film material between the positive and negative moulds, in which lateral creases are formed in the film material around the entire edge portion of the film material while the film material in the central upper portion of the mould retains its original shape during the deforming procedure.

The prior art does not teach a method in which tension is provided on the film material in order to stretch it without forming creases in a central portion of the depression, and then reducing the tension of the film material while it is being moulded in order to draw additional film material between the positive and negative moulds in which lateral creases are formed in the film material around the entire edge portion of the film material while the film material in the central upper portion of the mould retains its original shape during the deforming procedure. Patterson teaches only tray blanks that are cut and are scored in order to control the formation of wrinkles. The scoring is not completely through the sheet material and is performed to induce the sheet material to fold and form in desired regions and to control the formation of wrinkles in the tray. The forming and wrinkling of the tray surface is controlled by the positions of the scored regions of the blank. Ellison teaches a method in

which the film is firmly held in place over the mold cavity by a clamping frame that engages the film adjacent to the mold cavity rim. The film tension is reduced during the mold closing step in order to allow the film to move under the clamp into the cavity in a predetermined manner so as to minimize film thinning and wrinkling in the molded part.

In order to make a proper *prima facie* case for obviousness, all claim limitations must be accounted for. M.P.E.P. § 2143.03. This rejection fails to consider all elements of the claims and their meaning as the cited references do not include all elements of independent claims 1, 21 and 25. Modifying Patterson by the teaching of Ellison, does not teach a method in which tension is provided on the film material in order to stretch it without forming creases in a central portion of the film material, and then reducing the tension of the film material while it is being moulded in order to draw additional film material between the positive and negative moulds in which lateral creases are formed in the film material around the entire edge portion of the film material. Ellison teaches only reducing the film tension during the mold closing step in order to minimize film thinning and wrinkling in the molded part rather than providing tension in order to stretch the material without forming creases in a central portion of the material and then reducing tension to form lateral creases in the entire edge portions of the film material.

If an independent claim is non-obvious under 35 U.S.C. 103, than any claim depending therefrom is by definition non-obvious. Applicant respectfully submits that claims 3-9, 14, 15, 17-20, 27 and 28 depend at least in part from amended independent claims 1, 21 or 25 respectively. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 1, 3-9, 14, 15, 17-21, 25, 27 and 28 under 35 U.S.C. 103(a) as having subject matter unpatentable over U.S. Pat. No. 4,246,223 to Patterson in view of U.S. 2002/0079611 to Ellison et al.

Claims 10-12 have been rejected under 35 USC 103(a) as having subject matter unpatentable over Patterson and U.S. 2002/0079611 to Ellison et al. in view of U.S. Pat. No. 3,762,125 to Prena. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over Patterson and Ellison obviates the present rejection. The Prena reference adds no new teaching to the Patterson and Ellison references that would result in the inventive method of amended independent claim 1. Claims 10-12 depend at least in part on amended independent claim 1. If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of their dependency from claim 1, claims 10-12 are nonobvious over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 10-12 under 35 U.S.C. 103(a) as being unpatentable over Patterson and U.S. 2002/0079611 to Ellison et al. in view of U.S. Patent No. 3,762,125 to Prena.

Claims 16 and 26 have been rejected under 35 USC 103(a) as having subject matter unpatentable over Patterson and U.S. 2002/0079611 to Ellison et al. in view of U.S. Pat. No. 4,124,421 to Fujii. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over the Patterson and Ellison references obviates the present rejection. The Fujii reference adds no new teaching to these references that would result in the inventive method of amended independent claim 1 or 25. Claims 16 and 26 depend at least in part on amended independent claims 1 and 25 respectively. If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of their dependency from claims 1 and 25 respectively, claims 16 and 26 are nonobvious over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 16 and 26 under 35 U.S.C. 103(a) as being unpatentable over Patterson and Ellison et al. in view of U.S. Patent No. 4,124,421 to Fujii.

Claims 22-24 have been rejected under 35 USC 103(a) as having subject matter unpatentable over Patterson and U.S. 2002/0079611 to Ellison et al. in view of U.S. Pat. No. 5,009,056 to Porteous. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over Patterson and Ellison obviates the present rejection. The Porteous reference adds no new teaching to the Patterson and Ellison references that would result in the inventive method of amended independents claim 21. Claims 22-24 depend at least in part on amended independent claim 21. If an independent claim is non-obvious under 35 U.S.C. 103, than any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of their dependency from claim 21, claims 22-24 are nonobvioius over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 22-24 under 35 U.S.C. 103(a) as being unpatentable over Patterson and Ellison in view of U.S. Patent No. 5,009,056 to Porteous.

CONCLUSION

In view of the above, applicant believes the pending application is in condition for allowance.

The fee for a one month extension of time and the fee for the RCE is being submitted with this response. If additional fees are due, please charge our Deposit Account No. 06-2375, under Order No. HO-P03195US0 from which the undersigned is authorized to draw.

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Respectfully submitted,

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